CONTEMPT—PETITION FOR RECALL OF JUDGE. The defendant circulated a petition for the recall of a judge and, in a statement of the grounds for the proposed recall, as required by the state constitution, alleged judicial misconduct relative to a pending trial. *Held,* in view of the constitutional provisions as to the recall of officers, the statement in the petition was privileged and the defendant was not guilty of contempt. *Marians* v. *People ex rel Hines* (Colo. 1917) 169 Pac. 155.

A court possesses the power to commit for contempt, according to the American view, in order, that it may prevent interferenee with the administration of justice. 5 Columbia Law Rev. 249. A publication of matter reflecting upon the conduct of a pending cause is held to interfere with the course of justice and to be a "constructive" contempt. *State* v. *Hipple Printing Co.* (1915) 36 S. D. 210, 154 N. W. 292; *People ex rel. Connor* v. *Stapleton* (1893) 18 Colo. 568, 33 Pac. 167. The courts have been inclined, however, to restrict their common law power to commit for "constructive" contempt. For example, at common law an unfavorable criticism of the conduct of any trial, past or pending, was contempt, but it is now generally held in the United States that the criticism must relate to a pending cause. Rapalje, Contempt 56; 5 Columbia Law Rev. 249. In certain instances they have made further restrictions on their power to commit for contempt so as to not interfere with other policies of the law. *Cf. State* v. *Circuit Ct.* (1897) 97 Wis. 1, 72 N. W. 193. Thus a lawyer is not guilty of contempt in charging the presiding judge with misconduct, in an application for a change of venue, *In re Smith* (1913) 54 Colo. 486, 131 Pac. 277; *cf. Ex parte Curtis* (1859) 3 Minn. 274, and it was once held that an unfavorable criticism of the merits of a pending prosecution was not contempt if made wholly for the purpose of preventing the re-election of the governor who had instituted the prosecution. *People* v. *Few* (N. Y. 1807) 2 Johns. *290. Many conflicting decisions have arisen as to the power of a legislature to deprive the courts of their power to commit for "constructive" contempt, 4 Columbia Law Rev. 65, but it would seem to be unquestioned that a state constitution can deprive them of that power. *Cf. Ex parte Hickey* (1844) 12 Miss. 751. Since neither truth, *Globe Newspaper Co.* v. *Commonwealth* (1905) 188 Mass. 449, 74 N. E. 682; *Hughes* v. *Territory* (1906) 10 Ariz. 119, 85 Pac. 1058, nor the absence of willful intent, *In re Independent Pub. Co.* (D. C. 1915) 228 Fed. 787; *People* v. *Freer* (N. Y. 1804) 1 Caines 518, would ordinarily be a defense to contempt proceedings, it would seem that the provisions of the Colorado constitution requiring that the petitioner for the recall of a judge state the grounds of the proposed recall, could not be made effective unless the petitioner be protected against punishment for "constructive" contempt.

CONTRACTS — APPARENT MISTAKE IN OFFER BY TELEGRAPH. — The defendant delivered to a telegraph company an offer to sell a carload of potatoes at $1.35 per bushel. Through a mistake in transmission the order as delivered to the plaintiff read 35 cents per bushel. The plaintiff accepted at once by telegraph. The potatoes were shipped by a bill of lading to the shipper's order with a draft attached for the price at $1.35 per bushel. On presentation the plaintiff refused to pay the draft and later tendered the amount at 35 cents per bushel. Delivery of the goods being refused, he sued the carrier and the offeror in replevin. *Held,* since the telegraph company was the agent of the offeror title passed on the tender of the contract price, and

replevin would lie. *J. L. Price Brokerage Co.* v. *Chicago, etc. R. R.* (Mo. App. 1917) 199 S. W. 732.

Some American jurisdictions hold that the telegraph company is the agent of the offeror and that he is bound by mistakes in transmission. *Western Union Tel. Co.* v. *Flint River Lumber Co.* (1902) 114 Ga. 576, 40 S. E. 815. Other American jurisdictions follow the English rule that the telegraph company is not the agent of the offeror so as to bind him by mistakes in transmission, but is an independent contractor. *Henkel* v. *Pape* (1870) L. R. 6 Ex. 7; *Mount Gilead Cotton Oil Co.* v. *Western Union Tel. Co.* (N. C. 1916) 89 S. E. 21; see *Pepper* v. *Western Union Tel. Co.* (1889) 86 Tenn. 554, 11 S. W. 783. On principle, the latter view seems correct. 16 Columbia Law Rev. 617. Even on the assumption that the telegraph company is the agent of the offeror it is difficult to sustain the principal case. A party cannot accept an offer which he knows is a mistake, *Mummenhoff* v. *Randall* (1898) 19 Ind. App. 44, 49 N. E. 40, or which, in view of all the circumstances, he has good reason to believe is a mistake. *Harran* v. *Foley* (1885) 62 Wis. 584, 22 N. W. 837; see *Central R. R. of Ga.* v. *Gortatowsky* (1905) 123 Ga. 366, 51 S. W. 469. So if the mistake is apparent upon the face of the telegram or known to the receiver, he cannot hold the sender bound by its terms. *Germain Fruit Co.* v. *Western Union Tel. Co.* (1902) 137 Cal. 598, 70 Pac. 658; see *Central R. R. of Ga.* v. *Gortatowsky, supra.* With the market price approximating $1.35 per bushel, it would seem that it was apparent to the offeree, a brokerage firm, that the offer to sell at 35 cents per bushel was a mistake. *Cf. Mummenhoff* v. *Randall, supra.* Hence, no contract resulted and the tender of the price did not pass title. *Cf. Harran* v. *Foley, supra.*

EASEMENTS—ERECTION OF A SINGLE BUILDING BY A COMMON TENANT OF TWO ADJOINING LANDOWNERS.—A and B, owners of adjoining private dwellings, each separately leased to the same tenant, to whom each gave permission so to alter the buildings as to make a single building to be used as a hotel. When these leases terminated and more than twenty years before the present controversy, the landowners again separately leased to another single tenant. Subsequent leases to other single tenants were made without any agreement between the landlords. B, the defendant, now wishes to separate the building by putting up a partition wall. In an action to enjoin this proceeding, *held,* there was no easement of user in common, and the defendant could separate his portion. *Olin* v. *Kingsbury* (App. Div. 1st Dept.) 168 N. Y. Supp. 766.

The acquisition of easements by prescription depends upon an exercise of the right to a user by the owner of the dominant tenement, acquiesced in by the owner of the servient tenement, for a period which would give a right by adverse possession to realty. *Dalton* v. *Angus* (1881) 6 App. Cas. 740; Washburn, Easements and Servitudes (3rd ed.) 114. Moreover, the fact that such user was originally permissive, would not prevent the easement from arising, if there was a subsequent revocation and a claiming adversely known to the owner of the servient tenement. *Eckerson* v. *Crippen* (1888) 110 N. Y. 585, 18 N. E. 443; *Toney* v. *Knapp* (1906) 142 Mich. 652, 106 N. W. 552. Assuming, therefore, that in the principal case the right of user by one part of the house over the other part of the house began by permission such permission may be said to have terminated with the